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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,468	07/09/2003	Keith Milliman	2684	9594

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3734

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/616,468

Applicant(s)

MILLIMAN ET AL.

Examiner

Michael G. Mendoza

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/12/03, 7/26/04, 8/27/04</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "an intermediate stage wherein the links are fully-extended and substantially parallel to the horizontal axis; and a third, post-firing stage wherein the links are disposed at an angle relative to the horizontal axis" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

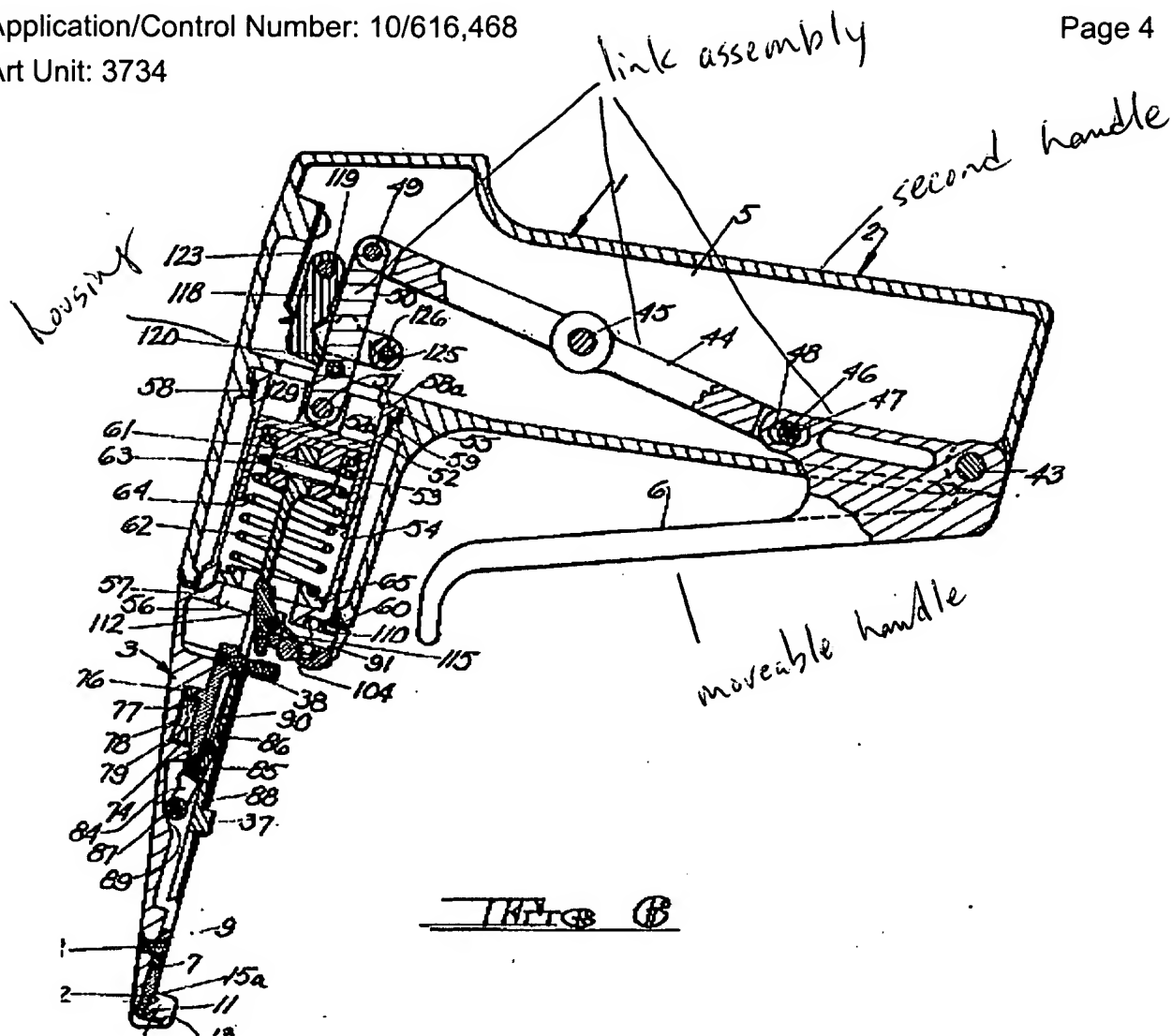
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Becht 4196836.

4. Becht teaches a surgical instrument for anastomosis of first and second blood vessels, comprising: a housing having distal and proximal ends and an actuator disposed therebetween, the actuator including: a handle moveable from a first position to at least one subsequent position; and a link assembly mechanically engaged with the handle; a disposable loading unit releasably attached to the distal end of the housing in mechanical cooperation with the actuator, the disposable loading unit 18 including a plurality of surgical fasteners (col. 4, lines 57-67); wherein the link assembly includes at least three links; wherein movement of the link assembly from a first to a second stage deforms the surgical fasteners (col. 5, line 42 – col. 6, line 3); and a second handle to facilitate activation of the actuator.

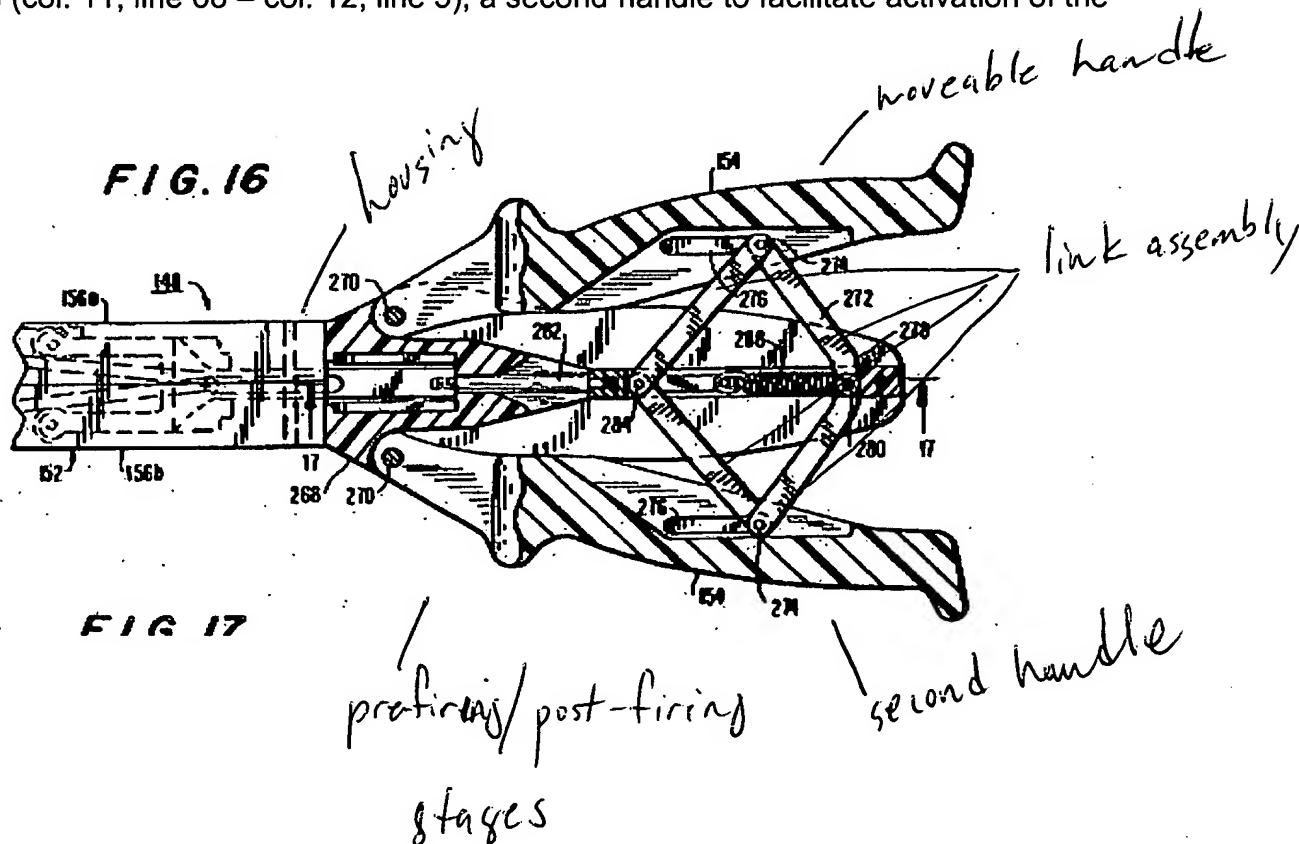


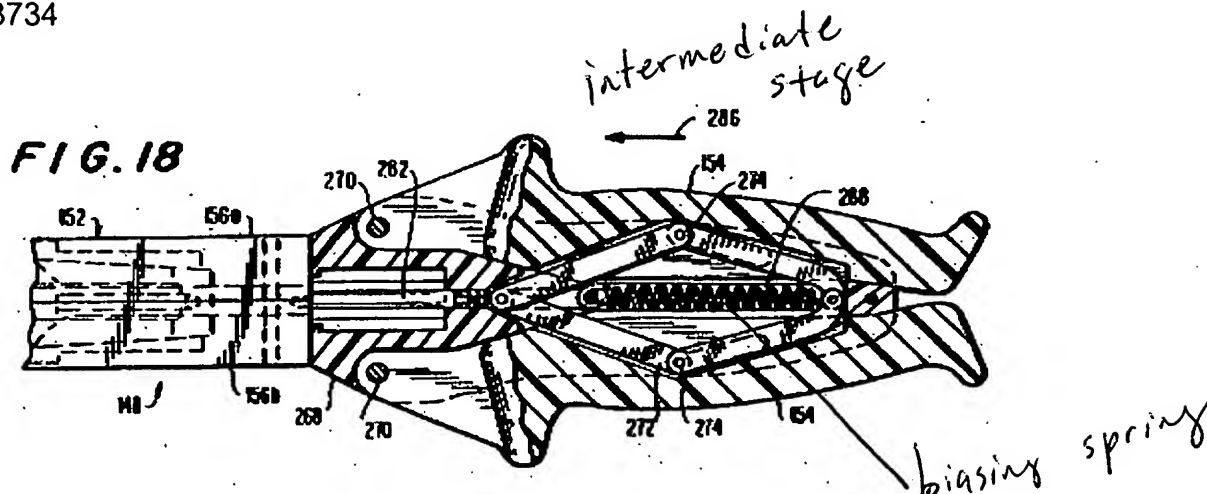
5. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Green et al. 592326.

6. Green et al. teaches a surgical instrument for anastomosis of first and second blood vessels, comprising: a housing having distal and proximal ends and an actuator disposed therebetween, the actuator including: a handle moveable from a first position to at least one subsequent position; and a link assembly mechanically engaged with the handle; a disposable loading unit releasably attached to the distal end of the housing in mechanical cooperation with the actuator, the disposable loading unit including a plurality of surgical fasteners (col. 7, lines 34-48); wherein the link assembly includes at

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least three links; wherein the firing stroke of the handle and the link assembly includes at least: a first, pre-firing stage wherein the links are disposed at an angle relative to a horizontal axis disposed through the housing; an intermediate stage wherein the links are fully-extended and substantially parallel to the horizontal axis; and a third, post-firing stage wherein the links are disposed at an angle relative to the horizontal axis (movement back to pre-firing); wherein movement of the link assembly from the second stage to the third stage releases the surgical fasteners from the disposable loading unit (col. 11, lines 50-59); wherein the link assembly biases a spring through the first and second stages of the firing stroke; wherein the biasing of the spring during the movement of links assembly through the first and second stages mechanically facilitates movement of the link assembly from the second to third stages to release the surgical fasteners (col. 11, line 68 – col. 12, line 5); a second handle to facilitate activation of the actuator.





### Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being obvious over Becht in view of Hirsch et al. 5368599.

9. Becht teaches the surgical instrument according to claim 1. It should be noted the Becht fails to teach wherein the handle includes a tab which locks the handle in proximate relation to the housing after completion of the firing stroke.

10. Hirsch et al. teach a device with a common tab for preventing unwanted firing of a staple (col. 4, lines 14-18). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the tab of Hirsch et al. with the surgical instrument of Becht to prevent accidental firing of staples.

### Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MM



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER